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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MATTHEW GANTT,

7 Plaintiff,

8 v.

9 JANET RHOTON,

10 Defendants.

Case No. C19-5352 RBL-TLF

ORDER GRANTING MOTION FOR
EXTENSION OF TIME, LEAVE TO
AMEND, AND MOTION FOR
EARLY DISCOVERY; AND
DENYING DEFENDANT'S MOTION
TO DISMISS AS MOOT

11 Plaintiff Matthew Gantt, proceeding *pro se* and *in forma pauperis*, sues defendant Janet
12 Rhoton pursuant to 42 U.S.C. § 1983, and alleges that his federal constitutional rights were
13 violated by Ms. Rhoton at the Pierce County Jail when he was denied necessary medical
14 treatment for schizophrenia. Plaintiff filed a motion for leave to file an amended complaint. Dkt.
15 21. Plaintiff requests leave to amend his complaint to add an unspecified number of defendants
16 (referred to as the potential "Doe" defendants in this order) and include additional facts of their
17 involvement in the alleged rights violation. *Id.* at 1-2. Plaintiff also requests sixty days to
18 research and "set forth the correct defendants in [his] amended complaint." *Id.* at 2.

19 In addition, plaintiff has filed a motion to conduct early discovery. Dkt. 14. Plaintiff
20 subsequently filed a proposed amended complaint after acquiring information about one of the
21 potential Doe defendants a person who allegedly failed to provide him with medication for his
22 mental illness. Dkt. 23. Plaintiff has also filed a motion for temporary restraining order or for
23 preliminary injunctive relief, asserting that his life is in danger. Dkt. 28. Yet the facts alleged in
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1 the motion for temporary restraining order are newly alleged and were not part of his complaint
2 or proposed amended complaint. Dkts. 4, 23.

3 Defendant's motion to dismiss plaintiff's complaint for failure to state a claim is
4 concurrently pending before this Court. Dkt. 9.

5 The Court must freely grant a *pro se* plaintiff leave to amend his complaint. Federal R. of
6 Civ. P. 15(a); *see Sharkey v. O'Neal*, 778 F.3d 767, 774 (9th Cir. 2015). Even so, leave to amend
7 need not be granted "where the amendment would be futile or where the amended complaint
8 would be subject to dismissal." *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

9 The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis* "at any
10 time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b) "fails to state a
11 claim on which relief may be granted" or (c) "seeks monetary relief against a defendant who is
12 immune from such relief." 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A(a), (b).

13 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the conduct
14 complained of was committed by a person acting under color of state law, and (2) the conduct
15 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the
16 United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Section 1983 is the appropriate
17 avenue to remedy an alleged wrong only if both of these elements are present. *Haygood v.*
18 *Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

19 Plaintiff's proposed amended complaint has abridged the facts previously attested to by
20 plaintiff and names as defendant only a single individual of those whom plaintiff has asserted
21 were involved, according to prior filings. The Court, on examining plaintiff's motions and
22 proposed complaint, interprets the combined pleadings and motions such that plaintiff is
23 requesting more time and discovery to find out who the defendants are, so that he can properly
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1 identify them and describe precisely what each defendant allegedly did, or failed to do. Plaintiff
2 alleges that he has a severe mental illness, he was placed on suicide watch in a segregation unit,
3 which would make it difficult for him to acquire information. Dkt. 19 at 2. The Court will
4 therefore grant plaintiff leave to amend his complaint, but the Court will not accept the currently
5 proposed amended complaint.

6 The Court finds good cause and orders that the parties will be allowed to conduct limited
7 early discovery. This will allow plaintiff to determine the identity of the persons that he believes
8 are potential defendants in his case, and to determine any acts or omissions that those individuals
9 may have undertaken with respect to his claims, so that he may file a more complete amended
10 complaint—that would supersede his original complaint—if such facts are discovered. *See*
11 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002); *ZG TOP*
12 *Technology Co., Ltd. v. Doe*, No. C19-92-RAJ, 2019 WL 917418 (W.D. Wash. February 25,
13 2019) (good cause is shown where, considering the administration of justice, the need for
14 expedited discovery outweighs prejudice to the party that is responding to the discovery). “In
15 evaluating whether a plaintiff establishes good cause to learn the identity of Doe defendants
16 through early discovery, courts examine whether the plaintiff (1) identifies the Doe defendant
17 with sufficient specificity that the Court can determine that the defendant is a real person who
18 can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant, (3)
19 demonstrates that the action can withstand a motion to dismiss, and (4) proves that the discovery
20 is likely to lead to identifying information that will permit service of process.” *ZG TOP*
21 *Technology Co., Ltd. v. Doe*; *see also, Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573,
22 578-80 (N.D. Cal. 1999). These elements have been met.

1 This exchange of early discovery will also assist the parties in obtaining evidence for the
2 Court to evaluate the Defendant's contention that there is an issue of whether plaintiff has
3 exhausted administrative remedies. Dkt. 9 at 9-12, Dkts. 20, 24, 25, 26. Considering that plaintiff
4 has made a motion for temporary restraining order and preliminary injunctive relief, it is in the
5 best interest of the parties to have this case resolved as soon as reasonably possible. *See Optic-*
6 *Electronic Corp. v. U.S.*, 683 F. Supp. 269, 271 (D.D.C. 1987) (even though plaintiff had not met
7 the burden of proof for a temporary restraining order, the allegations were serious and early
8 discovery was warranted). Without expedited discovery on the topics that pertain to whether
9 plaintiff has, or has not, received constitutionally-required medical treatment, and whether there
10 are grounds for injunctive relief, as well as issues pertaining to the affirmative defense of failure
11 to exhaust administrative remedies, neither party has the ability to present contentions to the
12 Court, nor does the Court have sufficient information to evaluate the parties' claims at this early
13 stage of the litigation. *See generally, Earthbound Vorp. V. MiTek USA, Inc.*, C16-1150RSM,
14 2016 WL 4418013 at *11 (W.D. Wash. August 19, 2016) (in the context of a motion for
15 temporary restraining order and for preliminary injunction, expedited discovery would be
16 reasonable).

17 Plaintiff is directed to file an amended complaint on or before December 2, 2019, which
18 shall include all of plaintiff's claims against all intended defendants, including "Doe" or
19 unnamed defendants, all the facts connecting defendants' conduct to plaintiff's medical claim,
20 and any other relevant facts or allegations of violations of plaintiff's constitutional rights. It must
21 be legibly rewritten or retyped in its entirety and contain the same case number. The proposed
22 complaint must be self-contained or incorporate any externally alleged facts by reference; any
23 cause of action alleged in the original complaint that is not alleged in the amended complaint is
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1 waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on*
2 *other grounds*, *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

3 The Court will screen the amended complaint to determine whether it states a claim for
4 relief cognizable under 42 U.S.C. § 1983. If the amended complaint is not timely filed or fails to
5 adequately address the issues raised herein, the undersigned will recommend dismissal of this
6 action as frivolous under 28 U.S.C. § 1915, and the dismissal will count as a “strike” under 28
7 U.S.C. § 1915(g). Plaintiff should be aware that a prisoner who brings three or more civil actions
8 or appeals that are dismissed on the grounds that they are legally frivolous, malicious, or fail to
9 state a claim, will be precluded from bringing any other civil action or appeal *in forma pauperis*,
10 “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

11 The Court **grants** plaintiff’s motion for leave to amend his complaint, **grants** the
12 plaintiff’s request to conduct limited early discovery, and consequently defendant’s motion to
13 dismiss for failure to state a claim is denied as **moot**.

14 The parties are directed to meet and confer within 14 days of service of this order,
15 pursuant to Fed. R. Civ. P. 26(f) and Western District of Washington Local Rule (LCR) 16
16 (a),(c) to agree upon an expedited, narrowly tailored process for exchanging early discovery. The
17 parties shall report to the Court the results of their conference during a telephonic hearing to be
18 scheduled by the Court in a separate order. During this conference, the parties shall provide the
19 Court with the status of plaintiff’s custody – to inform the Court of the facts concerning whether
20 the plaintiff is a pretrial detainee, or an inmate who is serving time in post-conviction custody.

1 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
2 civil rights complaint and for service, a copy of this Order and the *Pro Se* Information Sheet.

3 Dated this 1st day of October, 2019.

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5 Theresa L. Fricke
6 United States Magistrate Judge
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